**Case Information**

1. **Case Title:** São Paulo subway facial recognition case

1. **Meta Data**

1. **Case Number**: 1090663-42.2018.8.26.0100
2. **Corresponding Law Reference**: Brazil, 37th Civil Court, São Paulo, State of São Paulo, case no. 1090663-42.2018.8.26.0100
3. **Date of Decision**: 05-07-2021
4. **Featured Case**: n/a
5. **Region**: Latin-America and Caribbean
6. **Country**: Brazil
7. **Mode of Expression**:
8. **Judicial Body**: 37th Civil Court, São Paulo, State of São Paulo (First Instance Court);
9. **Type of Law**: Privacy
10. **Main Theme**: Privacy, Data Protection
11. **Outcome**: judgement against subway operator entered;
12. **Status**: on appeal
13. **Tags**: Data Protection.
14. **Excerpt**:

**Case Tracking -**

https://esaj.tjsp.jus.br/cpopg/show.do?processo.codigo=2S000WSPS0000&processo.foro=100&processo.numero=1090663-42.2018.8.26.0100

**Case Analysis**

1. **Summary and Outcome**
   1. **Summary**: The operator of a subway line in São Paulo deployed interactive doors to display advertisements, equipped with cameras using facial recognition technology to infer demographics and emotional reaction from riders. A consumer rights organization and the public defenders’ office filed a class action.
   2. **Outcome**: A trial court ruled that the subway operator could not use the data without consent from riders, and ordered it to cease using the equipment. It also awarded damages for non-economic harm.
2. **Facts**
   1. **Facts giving rise to cause of action**

In 2018, ViaQuatro, the operator for one of São Paulo’s subway lines, deployed interactive doors at its stations. It planned to use them to display personalized advertisements to riders, gauging demographics information and emotional reaction through cameras equipped with facial recognition technology. Idec (Instituto Brasileiro de Defesa do Consumidor), a consumer rights organization, and the public defenders’ office filed a class action suit seeking 100 million Brazilian reais in damages and an order against the use of the equipment by ViaQuatro.

1. **Cause of action or law at issue**
2. **Procedural history**
3. **Decision Overview**
   1. **Deciding judge & type of opinion**

Judge Patrícia Martins Conceição entered the judgement on the class action.

* 1. **Issue statement**

At issue before the trial court was whether the use of facial recognition technology absent consent from riders was legal.

* 1. **Court’s rulings & legal grounds**

On May 7, 2021, judgement was entered against ViaQuatro. It had argued there was no processing of personal data, because riders were never identified individually, and that no face recognition was implicated by the equipment, but rather only “face detection”. The court found ViaQuatro had not made a showing that this was the case, and the burden of proof fell with the defendant, who failed to provide the court with evidence supporting the claim, particularly expert evidence.

It further stated that even “face detection” as described by ViaQuatro “would seemingly implicate the concept of biometric data” under the General Data Protection Law, the processing of which likely required consent from data subjects. The court made special reference to provisions on the processing of data on children and adolescents. It concluded ViaQuatro had “unequivocally violated” the right to the protection of one’s image, data protection requirements for the processing of sensitive data, and consumers’ right to information.

* 1. **Concluding statement**

ViaQuatro was ordered not to use the interactive doors without securing prior consent from riders. The court also awarded 100,000 Brazilian reais in damages for collective harm arising from the unlawful data processing— less than the 100 million Brazilian reais the claimants had sought. It also rejected awarding damages for non-economic harm to riders themselves, ruling that this would entirely overlap with the damages for collective harm.

* 1. **Dissenting or Concurring opinions**

**Direction**

1. **Decision Direction**: expands expression;
2. **Information**: The court rebuffed the use of facial recognition technology, which has been repeatedly denounced as having chilling effects for speech.

**Perspective**

1. **Global Perspective:**
2. **International, Regional, and National Laws or Cases**
3. **Other National Standards, Law or Jurisprudence**
4. **General Notes**:

**Significance**

1. **Case significance**

The case is significant if nothing else on account of the impressive figure of impacted individuals —about 800,000 riders use the subway line operated by ViaQuatro daily. It also marked the first time a court ruled on the processing of biometric data by public transportation.

2. Precedential Effect

1. **Persuasive Effect**

Although nonbinding, the ruling can be a leading case on the use of facial recognition technology.

1. Related Cases
2. Additional Citations

**Documents**

1. **Official Case Documents**

**Orders:**

<https://www.internetlab.org.br/wp-content/uploads/2021/05/sentenca-reconhecimento-facial-1.pdf>

1. Amicus Briefs and Other Legal Authorities
2. Reports, Analysis and News Articles
3. Relevant Materials in Foreign Languages